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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALEX VILLANUEVA,

Plaintiff,

v.

COUNTY OF LOS ANGELES,
COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT, LOS
ANGELES COUNTY BOARD OF
SUPERVISORS, COUNTY EQUITY
OVERSIGHT PANEL, LOS
ANGELES COUNTY OFFICE OF
INSPECTOR GENERAL,
CONSTANCE KOMOROSKI,
MERCEDES CRUZ, ROBERTA
YANG, LAURA LECRIVAIN,
SERGIO V. ESCOBEDO, RON
KOPPERUD, ROBERT G. LUNA,
MAX-GUSTAF HUNTSMAN,
ESTHER LIM, and DOES 1 to 100,
inclusive,

Defendants.

CASE NO. 2:24-cv-04979 SVW (JCx)

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION *IN LIMINE*
NO. 1 TO EXCLUDE TESTIMONY
AND/OR EVIDENCE OF
PLAINTIFF'S PENSION BENEFITS**

*[Filed Concurrently with Oppositions to
Plaintiff's Motions in Limine Nos. 2-6;
Omnibus Declaration of Jason H.
Tokoro; Declaration of Marc A. Cohen,
M.D., M.S.; and [Proposed] Orders]*

Date: May 26, 2025

Time: 1:30 p.m.

Crtrm.: 10A

Assigned to the Hon. Stephen V.
Wilson, Crtrm. 10A and Magistrate
Judge Jacqueline Chooljian, Crtrm. 750

Trial Date: June 3, 2025

1 **I. INTRODUCTION**

2 Plaintiff seeks a sweeping order that bars “[e]vidence of, or regarding,
3 Plaintiff Villanueva’s receipt of pension benefits from the Los Angeles County
4 Employment Retirement Association (‘LACERA’).” (Mot. at 2:7-8.) The request
5 must be denied, as pension benefits are undoubtedly relevant to Plaintiff’s damages
6 claim.

7 In fact, the Court need look no further than *Broeker v. BNSF Railway Co.*,
8 [No. 19-CV-79-ABJ, 2021 WL 2944905 \(D. Wyo. June 28, 2021\)](#), the primary case
9 *relied upon by Plaintiff*. In *Broeker*, the court *denied* the plaintiff’s motion to
10 exclude evidence of “retirement benefits,” concluding that “Plaintiff has not met his
11 burden to show evidence of age-related retirement benefits are inadmissible under
12 any grounds.” *Id.* at *4.

13 Moreover, the relevance of the pension benefits received by Plaintiff has
14 *already been decided*. Plaintiff sought to quash a subpoena seeking the LACERA
15 documents, but the Magistrate denied the motion. Among other things, the
16 Magistrate concluded that pension benefits were relevant to the issue of whether
17 Plaintiff “lacks motivation to work/is incentivized not to return to work” and also as
18 a potential “offset to damages.” (Dkt. No. 88 at 2.) The Magistrate also rejected
19 Plaintiff’s argument—repeated in his Motion—that the LACERA payments are
20 subject to the “collateral source” rule because Defendant County of Los Angeles
21 (the “County”) is a contributor to “LACERA/the employee benefit fund.” (*Id.* at 3.)

22 Plaintiff could have challenged the Magistrate’s ruling, but did not do so. The
23 Magistrate’s conclusions on the issue of relevance and collateral source are now law
24 of the case and should not be revisited through a motion *in limine*. Plaintiff’s
25 Motion should be denied for these reasons.

26 **II. BACKGROUND**

27 **A. Plaintiff’s Claims**

28 In March 2022, two personnel complaints were filed against Plaintiff—who

1 was then the elected Sheriff of the County—alleging he violated the Policy of
2 Equality prohibiting harassment and discrimination within the County’s ranks. An
3 outside law firm investigated those complaints. The investigations and their
4 outcomes—including a notation of “Do Not Rehire” in Plaintiff’s personnel file—
5 were dictated by the evidence and independent decisions of the oversight panel.

6 Plaintiff filed his Tort Claim on May 15, 2024. (Dkt. No. 46, Exs. 7–8.)
7 There was nothing in it about ballot measures, vaccine mandates, or Fulgent. (*See*
8 *id.*) Plaintiff filed his initial complaint on June 13, 2024. (Dkt. No. 1.) There was
9 nothing in it about ballot measures, vaccine mandates, or Fulgent. (*See id.*)

10 Plaintiff filed his First Amended Complaint (“FAC”) on September 30, 2024
11 and, for the first time, alleged that the “protected speech” he engaged in was his
12 opposition to Ballot Measures A, J, and R, the County’s Covid vaccine mandate,
13 and the County’s Fulgent contract. (Dkt. No. 46.) The FAC further alleges a
14 sweeping conspiracy headed by the Board of Supervisors to retaliate against
15 Plaintiff. (*Id.*)

16 **B. Plaintiff’s Claimed Damages**

17 In the only operative cause of action, Plaintiff alleges that, “[a]s a result of
18 defendants’ adverse actions against plaintiff, plaintiff has suffered general and
19 special damages in sums according to proof.” (FAC ¶ 29.) As the Magistrate
20 pointed out, Plaintiff’s Supplemental Rule 26 Disclosures more specifically reflect
21 that Plaintiff seeks, among other things, “economic damages of past and future loss
22 of earnings corresponding to the amount he would have earned should he be able to
23 return to work for the County absent its unlawful acts in an amount that exceeds \$1
24 million.” (Dkt. No. 88 at 2 n.4 (citing Dkt. No. 70-2 at 35).)

25 On March 21, 2025, Plaintiff served his Rule 26 Expert Disclosure. (Dkt.
26
27
28

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1 100-2 (Omnibus Declaration of Jason H. Tokoro (“Tokoro Decl.”) Ex. 3).¹ His
2 damages expert, Sandra White, provided a “lost earnings” analysis based on two
3 scenarios: (1) Plaintiff’s lost earnings as a police chief of an unspecified city from
4 May 5, 2024 through retirement ages of 67, 72, or 75; or (2) Plaintiff’s lost earnings
5 as “MTA Chief of Police” from May 5, 2024 through retirement ages of 67, 72, or
6 75. (*Id.* ¶ 10, Ex. 9 at WHITE 000004-05.) For the “police chief” scenario, Ms.
7 White calculated a range of damages from \$1.95 to \$4.44 million. (*Id.* at WHITE
8 00004.) Ms. White did not reduce her damages calculations based on the nearly
9 \$200,000 annual pension that Plaintiff receives through LACERA. (*See id.*)

10 **C. Plaintiff’s Motion To Quash**

11 The County served a subpoena on LACERA, generally seeking documents
12 relating to Plaintiff’s receipt of pension or retirement benefits. (Dkt. No. 88 at 1
13 n.2.) Plaintiff moved to quash the subpoena in its entirety. (*See* Dkt. No. 67-70.)

14 The Magistrate issued her order granting in part and denying in part the
15 motion to quash on April 14, 2025.² (Dkt. No. 88 at 1.) Relevant here, the
16 Magistrate rejected “Plaintiff’s assertion that the information sought by the
17 Subpoena . . . is not relevant” and explained that because “Plaintiff seeks the loss of
18 employee benefits as part of his damages, the information sought appears to be
19 relevant at least to the calculation of damages.” (*Id.* at 2.) Further, the Magistrate
20 “decline[d] to find that pension benefits are not *relevant* to Plaintiff’s
21 motivation/incentive to work or to a potential offset.” (*Id.*)

22
23 ¹ Defendants submitted an Omnibus Declaration of Jason H. Tokoro with their
24 motions *in limine*. (Dkt. No. 100-2.) To the extent that declaration is referenced,
25 the term “Tokoro Decl.” is used. References to the 2nd Omnibus Declaration of Mr.
26 Tokoro submitted with Defendants’ opposition to Plaintiff’s motions *in limine* use
the term “2nd Tokoro Decl.”

27 ² The motion to quash was only granted “to the extent it calls for the production of
28 Plaintiff’s medical information and records prior to 2021.” (Dkt. No. 88 at 2.)

1 The Magistrate also rejected Plaintiff’s argument that the collateral source
2 rule applied: “[I]t appears to this Court that such rule is not applicable here because
3 the County—as a contributor to LACERA/the employee benefit fund—is not a
4 ‘collateral’ source.” (*Id.* at 3 (citing *Betkey v. County of Los Angeles*, No. CV 16-
5 5863-DMG (AGRx), 2017 WL 11632310, at *4 (C.D. Cal. Sept. 5, 2017); *Smart v.*
6 *Cal. Highway Patrol*, No. 2:17-cv-01075-TLN-JDP, 2021 WL 1549698, at *1 (E.D.
7 Cal. Apr. 20, 2021); *Davis v. CVS Pharmacy, Inc.*, No. CV 21-2484-DMG (KSx),
8 2023 WL 2558412, at *2 (C.D. Cal. Feb. 10, 2023).)

9 Plaintiff did not object to the Magistrate’s ruling despite having a right to do
10 so under Federal Rule of Civil Procedure 72 and Local Rule 72-2.1.

11 **III. STANDARDS FOR A MOTION IN LIMINE**

12 “Although the Federal Rules of Evidence do not explicitly authorize *in limine*
13 rulings, the practice has developed pursuant to the district court’s inherent authority
14 to manage the course of trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4 (1984).
15 The Ninth Circuit explained motions *in limine* allow parties to resolve evidentiary
16 disputes ahead of trial “before attempted use of the evidence before the jury.”
17 *United States v. Heller*, 551 F.3d 1108, 1111-12 (9th Cir. 2009).

18 Importantly, motions *in limine* seeking the exclusion of broad categories of
19 evidence are disfavored. See *Sperberg v. Goodyear Tire & Rubber Co.*, 519 F.2d
20 708, 712 (6th Cir. 1975). The court “is almost always better situated during the
21 actual trial to assess the value and utility of evidence.” *Wilkins v. Kmart Corp.*, 487
22 F. Supp. 2d 1216, 1218 (D. Kan. 2007).

23 Further, “a motion *in limine* should not be used to resolve factual disputes or
24 weigh evidence” (*C & E Servs., Inc. v. Ashland Inc.*, 539 F. Supp. 2d 316, 323
25 (D.D.C. 2008)) because that is the province of the jury. See *Reeves v. Sanderson*
26 *Plumbing Prods., Inc.*, 530 U.S. 133, 150-51 (2000). A court should not bar use of
27 the evidence in question unless the moving party establishes that the “evidence
28 clearly is not admissible for any valid purpose.” *Ochoa v. County of Kern*, 628 F.

1 Supp. 3d 1006, 1010 (E.D. Cal. 2022) (citing *Jonasson v. Lutheran Child & Fam.*
2 *Servs.*, 115 F.3d 436, 440 (7th Cir. 1997)).

3 **IV. PLAINTIFF’S MOTION MUST BE DENIED**

4 **A. Plaintiff’s Receipt Of Pension Benefits Is Relevant And Admissible**

5 Plaintiff asserts that “pension benefits are irrelevant because they are not used
6 in Plaintiff’s damage calculations.” (Mot. at 3:23-24.) The argument entirely
7 misses the mark.

8 The fact that Plaintiff and his expert do not “rely on plaintiff’s receipt of
9 pension benefits” (*id.* at 4:2) does nothing to undo its relevance, as the Magistrate
10 concluded, to “Plaintiff’s motivation/incentive to work or to a potential offset.”
11 (Dkt. No. 88 at 2.) The Magistrate’s finding of relevance is law of the case since
12 Plaintiff did not challenge it. *See, e.g., Christianson v. Colt Indus. Operating Corp.*,
13 486 U.S. 800, 815-16 (1988) (“[W]hen a court decides upon a rule of law, that
14 decision should continue to govern the same issues in subsequent stages in the same
15 case.’ This rule of practice promotes the finality and efficiency of the judicial
16 process by ‘protecting against the agitation of settled issues.’” (citations omitted));
17 *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (“Failure to apply the
18 doctrine of the law of the case absent one of [a few specified exceptions] constitutes
19 an abuse of discretion.”).

20 Plaintiff cites to *Broeker* as being “[i]llustrative” of his irrelevance argument
21 because the court granted “plaintiff’s motion in limine to exclude plaintiff’s
22 disability benefits because plaintiff had not ‘open[ed] the door to the admission of
23 this evidence.’” (Mot. at 4:7-10 (citing *Broeker*, 2021 WL 2944905, at *4).)
24 Plaintiff did not read *Broeker* closely enough.

25 As the *Broeker* court explained, “[a]s far as retirement benefits go, the Court
26 finds Plaintiff has not met his burden to show evidence of age-related **retirement**
27 **benefits** are inadmissible under any grounds.” 2021 WL 2944905, at *4 (emphasis
28 added). Among the bases of relevance relied upon by the *Broeker* court was that

1 “[e]vidence of a plaintiff’s receipt of . . . retirement benefits . . . can be admitted to
2 explain his or her lack of motivation for returning to work.” *Id.* at *2 (citing
3 *McGrath v. Consol. Rail Corp.*, 136 F.3d 838, 841 (1st Cir. 1998)). This, of course,
4 is one of the bases for relevance of Plaintiff’s pension benefits in this case.

5 Plaintiff does not address the relevance of his pension benefits as a reduction
6 to his damages. However, evidence of pension benefits are clearly relevant to
7 calculations of back pay. *See Mort v. DeJoy*, No. 1:19-cv-0652-JLT-SKO, 2022
8 WL 3229298, at *13 (E.D. Cal. Sept. 7, 2022). In *Mort*, the court denied a motion
9 *in limine* to “exclude all evidence of the retirement benefits” received by the
10 plaintiff “since his termination.” *Id.* The court noted further that the defendant
11 (U.S. Postmaster) funded part of plaintiff’s income over the years because
12 “[b]enefits under [the Federal Employees Retirement System] are funded almost
13 entirely by the federal agency that employed the recipient of the benefits.” *Id.* at
14 *14.

15 That is the case here. The County generally contributes to the retirement
16 funds of its employees. *See, e.g., Betkey*, 2017 WL 11632310, at *4. And here, it is
17 undisputed that the County contributes to LACERA; and Plaintiff cannot credibly
18 argue otherwise. (Dkt. No. 88 at 3.) Thus, excluding evidence of pension payments
19 where Plaintiff is seeking damages from the County would “in essence, create a
20 double recovery” for Plaintiff. *Mort*, 2022 WL 3229298, at *14 (citing *Viveros v.*
21 *Donahoe*, No. CV 10-08593 MMM (Ex), 2012 WL 6021667, at *9-10 (C.D. Cal.
22 Nov. 30, 2012) (finding collateral source rule inapplicable to unemployment
23 benefits funded by the Postal Service and considering it as offset to back pay)).

24 Plaintiff’s pension benefits are also relevant to his damages calculation in that
25 his expert has assumed retirement ages of 67, 72, or 75. The fact that Plaintiff is
26 receiving \$200,000 each year brings into question the reasonableness of the
27 hypothetical age of retirement. *See Broeker*, 2021 WL 2944905, at *3.

28 There is no doubt that evidence of pension payments received by Plaintiff

1 through LACERA is relevant.

2 **B. The Collateral Source Rule Does Not Apply**

3 Plaintiff argues, as he did before the Magistrate, that pension benefits
4 received through LACERA must be excluded under the collateral source rule. (Mot.
5 at 4:19-5:18.) As discussed above, the Magistrate already ruled otherwise and
6 Plaintiff did not challenge it. The analysis should end there.

7 For actions brought in federal court, the collateral source rule exists only
8 under federal common law, not under the Federal Rules of Evidence. *Mort*, 2022
9 WL 3229298, at *13. Generally, the collateral source rule prevents defendants from
10 reducing their liability for damages by introducing evidence regarding benefits
11 received by the plaintiff from an independent, or collateral, source. *McLean v.*
12 *Runyon*, 222 F.3d 1150, 1155-56 (9th Cir. 2000); *see also Mort*, 2022 WL 3229298,
13 at *13. “When a case is being heard in federal court, the evidentiary, as opposed to
14 the substantive, aspects of the collateral source rule are governed by the Federal
15 Rules of Evidence, particularly Rules 401, 402, and 403.” *Quintero v. United*
16 *States*, No. 1:08-CV-01890-OWW, 2011 WL 836735, at *5 (E.D. Cal. Mar. 2,
17 2011) (quoting *England v. Reinauer Transp. Cos.*, 194 F.3d 265, 273 (1st Cir.
18 1999)).

19 As courts in this District have recognized, the County is not a “collateral”
20 source where the payments come from employee benefit funds to which the County
21 contributed. *See, e.g., Betkey*, 2017 WL 11632310, at *4. There is no dispute that
22 the County contributes to LACERA. *See Mort*, 2022 WL 3229298, at *14.

23 Plaintiff’s reliance on *Eichel v. New York Central Railroad Co.*, 375 U.S. 253
24 (1963), and cases following it, such as *Ditton v. BNSF Railway Co.*, No. CV 12-
25 6932 JGB (JCGx), 2014 WL 12928305 (C.D. Cal. Jan. 6, 2014), is misplaced.
26 (Mot. at 4:26-5:13.) Those cases addressed *disability* benefits under the Federal
27 Employers’ Liability Act. As the *Broeker* court recognized, retirement benefits are
28 different from disability benefits. Further, and as the court recognized in *Mort*, the

1 collateral source rule is generally inapplicable to payments that are funded by the
2 defendant. *Mort*, 2022 WL 4095857, at *14.

3 **C. Plaintiff's Prejudice Argument Fails**

4 In a last attempt to keep LACERA payments from the jury, Plaintiff argues
5 that the resulting prejudice from disclosure of "wealth" weighs in favor of excluding
6 the evidence. (Mot. at 5:19-6:13.) This argument goes nowhere.

7 The LACERA payments are directly relevant to Plaintiff's damages, as set
8 forth above and far outweigh Plaintiff's generalized claim of prejudice. Further, any
9 prejudice can be alleviated by a jury instruction. *See, e.g., Denise S. v. Foreman*,
10 No. 2:22-cv-09237-MEMF-PD, 2025 WL 806314 at *6 (C.D. Cal. Feb. 13, 2025)
11 (noting that "prejudice can be mitigated through appropriate instructions to the
12 jury"). In fact, Judicial Council of California Civil Jury Instruction No. 117
13 provides the following instruction: "In reaching a verdict, you may not consider the
14 wealth or poverty of any party. The parties' wealth or poverty is not relevant to any
15 of the issues that you must decide." Defendants have proposed giving this
16 instruction to the jury. (Second Tokoro Decl. ¶ 10 & Ex. 1.) This would entirely
17 mitigate the prejudice concerns raised by Plaintiff.

18 **V. CONCLUSION**

19 For all of the foregoing reasons, Plaintiff's Motion should be denied.

20
21 DATED: May 5, 2025

Respectfully Submitted,

22 MILLER BARONDESS, LLP

23
24 By:



25 JASON H. TOKORO
26 Attorneys for Defendants
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